Supreme Court, U. S.
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IN THE

Supreme Court of the United States

Term, 1978

No. 78-222

THE BOARD OF EDUCATION FOR THE CITY OF VALDOSTA, GEORGIA,

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REUBEN H. YANCEY
Walker, Yancey and Gupton
P.O. Box 1507
Valdosta, Georgia 31601
Attorney for Petitioner

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v.

THE UNITED STATES OF AMERICA,

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above case on June 19, 1978.

OPINIONS BELOW

The opinion of the District Court for the Middle District of Georgia, Valdosta Division, is unreported and is attached as appendix beginning at page 1b. The second opinion of United States District Court for the Middle

District of Georgia, Valdosta Division, is unreported and is attached in the appendix beginning at page 1c. The opinion of the Court of Appeals for the Fifth Circuit is unreported and is attached in the appendix beginning at page 1a.

JURISDICTION

The jurisdiction of this Court is invoked under 28 USC 1254 (1).

QUESTIONS PRESENTED

(1) Once a segregated school system has implemented a plan of complete desegregation as proposed by the United States, (1971) should the United States be granted additional relief years later because of the existence of a small number of elementary schools (three) having a racial majority, although the United States agrees and the Court of Appeals finds that the school board has explicitly carried out the desegregation plan and that the schools complained of exist not by action of the Board of Education?

(2) After a school system is desegregated by Court order should it be treated on the same basis as school systems who unconstitutionally discriminate other than by law?

(3) Are children of elementary school age to be given special consideration although some small number of schools may remain of a majority of one race or another?

(4) Should the conflict between the Circuit Courts in this important matter on civil rights and school desegregation be resolved?

CONSTITUTIONAL PROVISIONS STATUTES INVOLVED

The Federal Statute involved is Title VI of the Civil Rights Act of 1964, and the regulations promulgated thereunder, 42 U.S.C. 2000 D, and the 14th Amendment to the United States Constitution.

STATEMENT

This case arose in 1971 when the United States of America filed its complaint against the Board of Education for the City of Valdosta, Georgia. The case differed from the usual school desegregation in that the parties were in complete agreement as to the desegregation of all schools in the system except two (2). The City of Valdosta was zoned into seven (7) areas for grammar school purposes (grades one (1) thru six (6)) which were acceptable to and were accepted by the United States as a complete desegregation of the schools of the City of Valdosta.

By order of the United States District Court entered on the first day of April, 1971, the disagreement as to the two (2) remaining schools was resolved and the Board of Education entered into the desegregation of the schools in accordance with the Court order and agreement between the parties.

On the 1st day of March, 1976, the United States filed its application in this case for additional relief alleging that there remained under the plan presented by the United States and agreed to by the Defendant and as ordered by the Court two (2) schools which were more than ninety percent (90%) black. (Not the schools originally disputed).

Neither the complaint, nor any allegation or evidence presented to the District Court alleged or showed that the Board of Education had taken any action, other than following the desegregation order, which would amount to a constitutional violation, segregative intent or action.

The District Court, upon the application for further relief, denied the application and ruled that the Valdosta Board of Education in operation of its schools was operating a unitary system in that the schools complained of were a result of housing patterns, a large portion of which arose as the direct result of housing financed by the United States.

The United States appealed this decision to the Fifth Circuit; the Fifth Circuit vacated the decision of the District Court that the schools were unitary and remanded for further development of plans to alleviate any instance of virtually one race elementary schools. In the remand order the Fifth Circuit mandated that the remedy should be tailored to achieve a unitary system rather than a system wide racial balance.

REASON FOR GRANTING THE WRIT

In addition to the reasons set out hereinafter this writ should be granted on the basis that there is confusion in the law as between the Circuits. In *Higgins v. The Board of*

Education for the City of Grand Rapids, 508 Fed. 2nd 779 (6th Circuit 1974), the Court of Appeals upheld a District Court in allowing the School Board to retain the concept of a neighborhood school system. In *Higgins,* the Board of Education's construction decisions and enrollment decisions were not motivated by segregative intent and the District Court did not err in finding that segregation in the school system was not the result of intentional acts by the school board but the result of housing patterns.

In the case now under consideration the Fifth Circuit has taken the position that when there exist two (2) schools containing a majority of a minority race this constitutes a constitutional violation per se. The Court of Appeals of the Fifth Circuit agrees that the Board of Education in this case has not committed itself to a constitutional violation nor have any other persons committed any other constitutional violations which resulted in there remaining two (2) schools which contain a majority of a minority race.

The tests for determining whether to impose a cross district remedy was announced by the Supreme Court in *Miliken v. Bradley,* 418 U.S. 717 (1974), the Court indicated that before the boundaries for a school district may be set aside it must be shown that racially-discriminatory acts of the State or local school districts or of the single school district have been a substantial cause of segregation. Though no cross district remedy is involved in this case the test for additional relief is the same.

In 1977, this Court decided in *Village of Arlington Heights v. Metropolitan Housing Development Corp.,* 429 U.S. 252, 50 Law. Ed. 2d. 450, 7 S. Ct. 555, following this Court's decision in *Washington v. Davis,* 426 U.S. 229, 48 Law. Ed. 2d. 597, 96 S. Ct. 2040 (1976) stating that action

will not be held unconstitutional solely because it results in a racially disproportioned impact. In the case now in consideration the only official action taken by the Board of Education was to follow the plan and guidelines set forth by the United States for desegregation of the schools. If following the plan of United States had a racially disproportioned impact then, under the *Arlington Heights* decision, this would not amount to a constitutional violation. Nor was invidious discriminatory purposes the motivating factor in drawing such attendance zone lines, a Court order and a desegregation plan drawn by the United States were the motivating factors. The Fifth Circuit seemed to ignore both the housing impact or whether or not the Board of Education had committed itself to a constitutional violation.

It must be pointed out here that the United States does not argue and there does not exist any action by the Board of Education in faculty assignment which would be discriminatory nor do they wish to view the school system as a whole by only in the narrow view as to the existence of the few schools containing a majority of racial makeup of students of one race or the other. In *The United States v. The School District of Omaha,* 521 Fed. 2nd. 530 (Eighth Circuit, 1975) the Court laid out the tests for raising the presumption of segregated intent in order to give rise to the decision of the Fifth Circuit in this case. The Valdosta Board assumed the burden of proof before the District Court and no constitutional violation was found nor does the Court of Appeals find such violation.

In *Drummon v Acree,* 409 U.S. 1232 (1972), the Supreme Court stated in its opinion that the constitutional command to desegregate schools does not mean that every

school in every community must always reflect the racial composition of the system as a whole.

There being no showing in the District Court of intentional segregative school board actions, or inaction, the Fifth Circuit should have followed *Keys v. School District No. 1, Denver, Colorado,* 413 U.S. 189 (1973). In that case this Court held that a finding of intentional segregative school board actions in a *meaningful portion* (emphasis ours) of a school system created a prima facie case of an unlawful segregative design on part of school authorities.

The burden which the school board is to carry is to induce proof sufficient enough to support a finding that segregative intent was not among the factors that motivated their actions. In the case now at hand the school board has supported and carried their burden of proof whereas the United States has failed to make any showing that there was any segregative intent by action or inaction.

Again in *Keys,* this Court stated that at some point in time the relationship between the past segregated acts and present segregation become so attuned as to be incapable of supporting a finding of segregation, warranting judicial intervention. 413 U.S. at 211.

In 1968, this Court, in *Green v. County School Board,* 391 U.S. 430 (1968), abandoned the freedom of choice plans favoring mandatory student assignments through geographic zoning. Geographic zoning is exactly what has occurred in the City of Valdosta. The District Court in the *Green* case, upon remand, found that a unitary system had been obtained under the plans of geographic zoning, the District Court below then denied all injunctive relief which would have been originally ask.

At this point it would be best that I cited to the Court an unappealed from decision, *Davis v. East Baton Rouge Parish School Board,* 398 Fed. Supp. 1013 (M.D.LA. 1975).

The *East Baton Rouge Parish School Board* had been totally cooperative and had at all times made a good faith effort to comply with the orders issued. At the time of the hearing of the case no students in the East Baton Rouge School system is denied either the right or the opportunity to attend an integrated school according to the Court. The Court found that whatever segregation did, as it does in a few all black and all white schools in the system, exist by a deliberate choice and because of voluntary neighborhood housing patterns. The Court stated as follows:

> "To force a few white students to attend a few all black schools, or to force a few black students to attend the two (2) all white schools, solely for the purpose of being able to say that one hundred percent (100%) of the schools in the system have racially mixed student bodies would be the height of foolishness." 398 Fed. Supp. at 1017.

In the case now under decision the Fifth Circuit itself complimented the school board on its action for desegregation, clearly stating that these were not a matter of system wide segregated schools nor for that matter are all of the elementary schools in the system involved. There is no contention on the part of the United States or in the decision of the Fifth Circuit that segregation "by law" has not ceased.

In the case now in consideration there are seven (7) elementary schools, zoned in accordance with the mandate of the United States District Court as proposed by the United States. This action for additional relief basically

involves two (2) schools which are widely separated from the other schools of the system and located in neighborhoods which are virtually black in population. However, the Fifth Circuit ignored, as did the United States in their request, the makeup of the faculty in these schools and in no instance did the United States contend that the schools were in themselves racially identifiable except as to student population.

In light of *Swann v. Board of Education,* 402 U.S. 1 (26) (1971) and in view of *Pasedena Board of Education, et al. v. Spangler, et al.,* 427 U.S. 424, 49 L.Ed.2d. 599, 96 S. Ct. 2697 (1976), it was proper for the District Court to find that the Motion For Supplemental Relief should be denied in that the constitutional standards were met by the present plan in effect.

This Court, in *Swann* made it clear that:

> "Neither school authorities nor District Courts are constitutionally required to make a year by year adjustment of racial composition of student bodies once the affirmative duty to desegregate has been accomplished."

Further, this Court found that an intervention, or supplemental relief, should only be granted when there is a positive showing that either the school authorities or some other agencies of the state has deliberately attempted to fix or alter a demographic pattern to affect racial composition. 402 U.S. at 32 (See also *Wright v. Council of the City of Emporia,* 407 U.S. 551, 479 (1972).)

In *Higgins v. The Board of Education For the City of Grand Rapids,* 508 Fed. 2nd 779, (Sixth Circuit 1974) the Court noted that the attendance of very small children to predominately black or white elementary schools was a result of housing patterns, a portion which was created by

the United States Government. Again, in the case now under consideration, the attendance of these small children to schools containing a majority of their race was created by a plan of the United States that allowed and aided the development of (after the school plan which was put into effect) low rent housing projects which are totally black in population.

Since the decision in *Brown v. Board of Education,* 349 U.S. 294, numerous District Courts and Circuit Courts have implemented nearly as many plans for desegregation as there are school systems who have been brought to the attention of the Court. *The United States v. Texas Education Authority,* 469 Fed. Supp. 848; *Dandridge v. Jefferson Parish Board of Education,* 456 Fed. 2d. 552; *Ellis v. Board of Public Instruction of Orange County,* 465 Fed. 2d. 878. Many if not all resulted in some small number of schools having a racial majority.

It is clear in this case that the action by the United States now is for sociological reasons and not for the purpose of education.

In *Swann* the District Court arrived at a decision that since the time the United States, through the Justice Department, and the Department of Health, Education and Welfare had devised the plan which had been followed meticulously by the Board of Education that the system was unitary. No child was prohibited from attending a school in which his race was a minority and that the mere existence of one or two schools having a majority racial composition was not a constitutional violation. This Court in *Swann,* at page 26, stated as follows:

> "It should be clear that the existence of some small number of one race schools or virtually one race

schools, within a district is not any of itself a mark of a system that still practices segregation by law."

It is therefore the contention of the Board of Education for the City of Valdosta, Georgia, that the school system is unitary and that the United States was not entitled to additional relief simply to alleviate the existence of two (2) schools in which the racial composition is in a majority black. This contention of the board is based on the following:

(a) There has been no constitutionally segregative acts on the part of the Board of Education.

(b) That no child in the system is prohibited from continuing his education in a school in which his race is in a minority.

(c) That the school system must be judged on the basis of the system as a whole, including teacher assignments.

(d) That elementary students, without transportation, deserve special consideration.

(e) That any schools which remain, having a majority of one race, are the result of housing patterns.

In *Spangler* and *Thurman v. Acree,* 409 U.S. 1232, this Court stated that the constitutional command to desegregate the schools does not mean every school in every community must always reflect with racial composition of the school system as a whole. For once having implemented a racially neutral attendance pattern in order to remedy perceived constitutional violations on the part of the Defendants the school districts has fully performed its functions of providing appropriate remedies for previous racially discriminatory attendance patterns. Under these circumstances the Court of Appeals for the Fifth Circuit

should have affirmed the District Court's opinion. The District Court heard all the evidence presented by the United States for affirmative relief and found no facts constituting a constitutional violation. The Court of Appeals should have affirmed the District Court in that the law in other Circuits, as hereinbefore set out, is dimetrically opposed to the law perceived by the Fifth Circuit. Further, the Fifth Circuit failed to apply the mandate of the Supreme Court of the United States in the cases previously cited herein.

As in the case now in consideration, and other cases, there is a complete absence in the Case Law, Statutory Law or other provisions as to the meaning of the achievement of a "unitary system". If each case must rest upon its own facts then, in fact, the finding of the District Court in hearing the evidence should be affirmed. It would appear in the reading of the opinion of the Fifth Circuit that if a school system was previously segregated by law and even though a plan of desegregation was implemented under the auspices of the United States and its Courts and if any of these schools remain predominately of one race then there is a burden upon the school boards and that these school systems shall never become unitary.

In this petition for certiorari we have cited decisions from several Circuits other than the Fifth Circuit of the United States. And each of those cases whether the Circuit was in the Southern part of the United States in which segregation by law was previously practiced or whether in states where no such laws existed the Courts found that there had been a constitutional violation as to the segregation of students in public schools. Once the schools of each of the regions had achieved desegregation through the implementation of a

plan approved by the Courts then the schools in regions other than those having segregative statutes prior to *Brown* achieve unitary status and those having segregative statutes prior to *Brown* did not.

This Court in *School District of Omaha, et al. v. United States,* 53 Law. Ed. 2d. 1039, decided June 29, 1977, vacated the judgment of the Court of Appeals of the Eighth Circuit and remanded it for reconsideration in the light of *Village of Arlington Heights v. Metropolitan Housing Development Corporation,* holding that in the absence of discriminatory preference, a law or act is not unconstitutional solely because it has racially disproportionate impact.

The United States should not be granted additional relief in such case as is now in consideration unless it shows that some decision, action or inaction on the Board of Education brought about the existence of a small number of schools having a large majority of black or white students.

In the case now under consideration the Fifth Circuit continually states that it understands the law in "this Circuit" to be as it has indicated by its final opinion, indicating a different "law" in other Circuits. Under the cases previously cited to this Court from other Circuits it would appear that once a Board of Education has taken affirmative action, as was taken by the Valdosta City Board of Education, then such Board of Education should at least be judged on the same basis as Boards of Education who were found to have segregated schools although no segregative laws existed prior to *Brown.*

The District Court, in its initial decision and with the agreement of the Valdosta Board of Education and the United States, followed the mandate of this Court in *Davis*

v. Board of School Commissioners, 402 U.S. 33 (1971) and this Court stated the philosophy as follows:

> "Having one found a violation the District Judge or School Authority should make every effort to achieve the greatest possible degree of actual desegregation, taking into account the practicalities of the situation. The District Court may and should consider the use of all available techniques including restructuring of attendance zones and both the contiguous and noncontiguous attendance zones."

This is exactly what was accomplished in the initial desegregation plan. The remedies permitted in *Wright v. Council of Emporia,* 407 U.S. 451, 462 (1972), in *Swann,* and in *Green v. County School Board,* 391 U.S. 430, 438-42 (1968) at first glance seem to be at odds with the requirement of the controlling principal in that the remedy achieved only that level of integration which would have occurred absence the violations. For example, in *Swann* the Court authorized busing to achieve flexible racial quotas without any discussion of whether those balances would have been achieved absent the prior establishment of a dual school system. With the emphasis on the effectiveness of the remedy in achieving integration, these cases implicitly object to the likely possibility that even if there had not been a dual school system residential segregation still would have resulted in some segregation in the schools. *Dayton Board of Education v. Brinkman,* 97 S. Ct. 2766 (1977).

The fear of this Court, established in *Green*, that local authorities were using factually neutral techniques to continue a dual school system is not present in this case, affirmative action having already been achieved. This Court, faced earlier with problems of enforcement and

speaking always in the terms of disestablishment, never explicitly defined the limits of equal protection remedies until it was forced to deal with a quite different situation presented by the Northern school segregation. In *Keys* the Court dealt with segregative intent and the difference between the dejure and defacto segregation and the essential prerequisite to the imposition of school desegregation remedies.

It is the contention of the Valdosta Board of Education that it should be treated on the same basis, after having implemented the full plan of desegregation, as those school districts which practice segregation, not by law but by fact.

CONCLUSION

This Court should grant the petition for Writ of Certiorari and hear the issues raised in this important area of civil rights.

Respectfully submitted,

WALKER, YANCEY AND GUPTON

/s/ By: Reuben H. Yancey
Reuben H. Yancey
P.O. Box 1507
Valdosta, Georgia 31601
Attorney for Petitioner

IN THE
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THE UNITED STATES OF AMERICA,

Respondent.

APPENDIX A

OPINION OF THE UNITED STATES COURT OF APPEALS FIFTH CIRCUIT

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 76-3024

UNITED STATES OF AMERICA,
Plaintiff-Appellant,

v.

THE BOARD OF EDUCATION OF VALDOSTA, GEORGIA, ET AL.,
Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Georgia

(June 19, 1978)

Before AINSWORTH, GODBOLD and HILL, Circuit Judges.

PER CURIAM:

In this case our concern is with the existence of several virtually one-race elementary schools in a system that is otherwise fully desegregated. The district court found that Valdosta's schools had achieved unitary status, and denied the United States' motion for supplemental relief. We vacate and remand for further consideration.

A desegregation order for the Valdosta, Georgia school system was issued in 1971. Valdosta has complied with this plan, and has in large part successfully eradicated the dual school system that existed prior to 1971. Nevertheless, implementation of the plan has resulted in the continued existence of several racially identifiable elementary schools. This court has due regard for the success of the Valdosta school board in abolishing the vestiges of the dual system at the junior and senior high school levels. We acknowledge that "the existence of some small number of . . . virtually one-race schools . . . is not in and of itself the mark of a system that still practices segregation by law." Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 26, 91 S. Ct. 1267, 1281 (1971). *Yet we cannot conclude that Valdosta has fully eliminated its dual school system.* In evaluating this appeal we look to the law of school desegregation as *currently understood in this Circuit.* See Dandridge v. Jefferson Parish School Bd., 5 Cir., 456 F.2d 552, 554, *cert. denied*, 409 U.S. 978, 93 S. Ct. 306 (1972). The critical issue here is whether a unitary system has been achieved at any time subsequent to the imposition of the desegregation order. Thus, this case is not comparable to the situation in Pasadena City Bd. of Educ. v. Spangler, 427 U.S. 424, 96 S. Ct. 2697 (1976), where a unitary system already had been achieved, and the racial concentrations were the result of demographic changes rather than the actions of the school board. *See* United States v. South Park Independent School Dist., 5 Cir., 1978, 566 F.2d 1221, 1224-25.

A number of post-*Swann* cases in this Circuit have evaluated school districts operating in compliance with pre-*Swann* desegregation orders and found that the continued

existence of a significant number of virtually one-race schools is constitutionally suspect. *See, e.g.*, United States v. South Park Independent School Dist., *supra.* These decisions have drawn on *Swann*'s declaration that

> in a system with a history of segregation the need for remedial criteria of sufficient specificity to assure a school authority's compliance with its constitutional duty warrants a presumption against schools that are substantially disproportionate in their racial composition.

402 U.S. at 26, 91 S. Ct. at 1281.

As the following table illustrates, some of Valdosta's elementary schools remain racially identifiable:

	1970			1976		
	Black	**White**	**% Black**	**Black**	**White**	**% Black**
S. L. Mason	89	588	13%	131	458	22%
West Gordon	576	44	92%	509	30	94%
Sallas-Mahone	48	706	6%	59	475	11%
W. G. Nunn	14	609	2%	40	438	8%
Lelia Ellis	116	262	30%	162	164	50%
Southeast	486	0	100%	676	1	99.8%
Lomax	659	3	99.5%	408	3	99%

Thus, we can see that several of Valdosta's elementary schools are virtually one race. Fifty-five percent of Valdosta's elementary school population is black, and 80% of those black students attend schools that are over 90% black — West Gordon, Lomax, and Southeast elementary schools. This high incidence of racially identifiable schools belies the school board's contention that Valdosta has achieved a unitary school system.

This case must, therefore, be remanded to the district court for the development of a plan that is designed to

alleviate the incidence of virtually one-race elementary schools. Under the facts of this case, we cannot conclude that this pupil assignment plan constitutes full performance of the school board's duty to eradicate the dual school system.

In remanding this case we emphasize that the remedy should be tailored to achieving a unitary system rather than a systemwide racial balance.[1] *See* Dayton Bd. of Educ. v. Brinkman, 433 U.S. 406, 412-20, 97 S. Ct. 2766, 2775 (1977); Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 24, 91 S. Ct. 1267, 1280 (1971):

> If we were to read the holding of the District Court to require, as a matter of substantive constitutional right, any particular degree of racial balance or mixing, that approach would be disapproved . . . The constitutional command to desegrate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole.

The district court should give further consideration to the steps necessary to create a unitary school system in Valdosta. We note with approval the declaration of this court in United States v. State of Mississippi (Laurel), 5 Cir., 1978, 567 F.2d 1276, 1277, that a "fresh approach may offer a better solution, but solution must indeed be found . . . . "

On remand, this matter should be expedited. The parties and the court are directed to see to the implementation of a desegregation plan at the earliest practicable time.

VACATED AND REMANDED.

IN THE
SUPREME COURT OF THE UNITED STATES
TERM, 1978

No.

THE BOARD OF EDUCATION FOR THE CITY OF VALDOSTA, GEORGIA,

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Respondent.

APPENDIX B

UNITED STATES DISTRICT COURT OPINION
1971

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION

UNITED STATES OF AMERICA,	)(
Plaintiff,	)(
v.	)(CIVIL ACTION
THE BOARD OF EDUCATION OF VALDOSTA, GEORGIA; JOHN HOWELL, Chairman, I. H. TILLMAN, REUBEN YANCEY, HULYN SMITH, STANLEY BISHOP, ROBERT QUATTLEBAUM, MRS. BERAN BLACKBURN, GORDON SOUTHWELL, Members, and JAMES F. GOOLSBY, Superintendent, VALDOSTA CITY SCHOOL SYSTEM,	)(NO. 861
Defendants.	)(

FILED at 11:30 A.M.
APR - 1 1971
Deputy Clerk, U.S. District Court

BOOTLE, District Judge:

This school desegregation suit differs from the run-of-the-mill school desegregation case in several interesting particulars. The complaint contends that the defendant Board of Education is obligated to desegregate not just because the Constitution requires it, but also because the defendants in order to qualify for federal financial assistance submitted to the government its assurance of compliance with the provisions of Title VI of the Civil

Rights Act of 1964 and the regulations promulgated thereunder, thus giving rise, the complaint says, to contractual obligations. The defendants admit having submitted a form known as assurance of compliance but denies that the form was ever completed by either the plaintiff or the defendants and says that no contractual obligations of any nature arose. This contractual aspect of preparation for trial plaintiff and defendants agreed to modify said zone lines as shown by "Exhibit B" attached hereto, and with respect to said exhibit the parties stipulated as follows:

> "That all parties agree with the student assignment provisions of the plan submitted by the Office of Education of HEW (same as said Exhibit B) in regard to zones II, III, IV, and V and VI provided that the court may readjust any boundaries to conform to any changes it may wish to make in zone I as provided by the HEW plan."

As appears from the foregoing there was no agreement with respect to student assignment provisions for zone I. And that leads us to the only question to be decided by this court: What shall be done with the grammar school students residing in zone I as shown on Exhibit B?

Prior to trial the court signed a consent order requesting the U. S. Office of Education to furnish technical assistance in formulating a plan for desegregation and requesting the parties to attempt to agree upon a plan, and providing that should there be no agreement each party may file its suggested plan. With respect to zone I the government plan provided as follows:

> "Zone I having two schools with its limits, namely the S. L. Mason School and the Gordon Street School. These schools to be operated as follows: The Gordon

> Street School serves grades 1, 2, and 3, the S. L. Mason School to serve grades 4, 5, and 6 for the children in zone I."

The plan filed by the defendants strongly objects to the above mentioned proposed pairing of the Gordon Street School and the S. L. Mason School, and provides as follows:

> "Zone 1 should be divided into Zone 1-a and Zone 1-b along the One Mile Branch from its exit point at the city limits to its intersection with Oak Street."

as shown by a plat attached to said plan and hereto attached as "Exhibit C." The evidentiary hearing held centered about the advisability or inadvisability of pairing these two schools. The pairing proposal was advocated by Mr. Kenneth Lant who is associated with the U. S. Office of Education. It was opposed by Mr. Virgil B. Beck, principal of the Gordon Street School, Mr. Hadley McDuffie, principal of the S. L. Mason School, Mr. James F. Goolsby, superintendent of the defendant school system, and by Dr. Jerome Cox, Director of Instruction for the Valdosta schools. This court is satisfied that each of these four witnesses is a capable educator, knowledgeable in his field, and that each of them, of course, knows far more about the matter of educating children, particularly small children, than this court will ever know. This court is impressed with the sincerity of each of these four witnesses. Mr. Lant testified in effect that in his opinion it would be practicable to pair these two schools, sending all students in grades 1 through 3 to Gordon and all students in grades 4 through 6 to Mason. He recognized, of course, that these two schools are now organized and operating along entirely different instructional methods, Mason being a normally

constituted school for grades 1 through 6; many, if not all, of its classrooms being self-contained, each walled off to itself, and the lower wing (8 classrooms) not being planned for grades 4, 5 or 6, but each containing its small restroom with commodes eleven inches high and lavatories and drinking fountains about twenty-four inches high; and that, on the other hand, the Gordon Street school was built specifically for the new type non-graded teaching done by six teams of four teachers each working within six large multi-graded classrooms. These teachers engaged in this new type teaching at Gordon were specially trained for that purpose. Mr. Beck, principal at the Gordon school, has been working over four years training teachers for this new type teaching. In his opinion, as an educator, he needs in this program the older students grades 4 through 6 in order that the younger students, grades 1 through 3, may reap the full advantage of this type of instruction. In fact, some of the older students are used in tutoring the younger students. It would be a waste of training for these teachers specially trained for team teaching where each teacher teaches all subjects to be transferred with the older students to the orthodox type Mason school. Mr. Lant did not gainsay the disruptive effect pairing would have upon the educational program at Gordon, but thinks that the disadvantages might be offset by some advantages which might flow from pupils being in classes with other students of different backgrounds. This was the only educational advantage which he ascribed to the proposed pairing.

It so happens that Mr. Beck, principal of Gordon, and Mr. McDuffie, principal at Mason, has each prepared a two-page statement of his views as an educator on the ground setting forth numerous disadvantages and objections

to the proposed pairing of these two schools. This court is impressed with those statements, thinks they are sound, finds the facts to be as therein stated, and without attempt at paraphrasing attaches Mr. Beck's statement hereto as "Exhibit D" and Mr. McDuffie's statement hereto as "Exhibit E."

An additional objection to pairing voiced by Mr. Beck and not included in his statement is the fact that of the 665 students he has at Gordon 242 of them come from homes in which no male adult resides and no father image is present. The significance of this fact in this case lies in the fact that there is no public transportation system in Valdosta and practically no private transportation system available to students who do not have cars available and according to Mr. Beck's testimony fully one-third of his 665 students are brought to school by their older brothers or sisters. If these older students were transferred to Mason the attendance at Gordon of these smaller students in grades through 3 would seriously drop.

Dr. Cox testified that in his opinion all pairing is unsound educationally because, in his opinion, students profit from association with the older students at school.

Aside from the educational disadvantages of pairing these two different type schools such pairing would entail considerable economic loss in addition to losing the advantage of the training furnished the specialized teachers for the Gordon program. Mr. Goolsby, the superintendent, testified that there would have to be two new restrooms for the older children at Mason at a cost of $15,000.00 to $20,000.00; that the expense necessary to acquiring new textbooks would amount to approximately $10,000.00; that re-training new teachers would cost approximately

$10,000.00 and that there would be the expense of moving equipment and purchasing new equipment.

The geography of zone 1 does not lend itself to pairing these two schools. In this elongated zone children from its northern extremity would have to travel three miles to get to Gordon; children in its southern extremity would have to travel 2.3 miles to get to Mason. These two schools are nearly a mile apart as the crow flies and are one and one-half miles apart by the nearest travel route. They are separated by a parking lot used by students of Valdosta State College and by a large cemetery. Travel by young students through the parking lot would be undesirable.

This court, after considering all of the evidence, rejects the plan proposed by the U.S. Office of Education insofar as it proposes pairing of the S. L. Mason and the Gordon Street Schools. It also rejects the plan proposed by the defendants insofar as it proposes dividing zone 1 into zone 1-a and zone 1-b along the One Mile Branch from its exit point at the city limits to its intersection with Oak Street as proposed on "Exhibit C", and it is hereby ordered that zone 1 be divided by the zone line as specifically drawn on "Exhibit F" attached hereto and made a part hereof. This change in zone line will give Mason in zone 1-a an estimated enrollment of 542 white and 100 black rather than an enrollment of 542 white and no black as the defendants' proposed zone line would have done, and will leave Gordon with an enrollment of 80 white and 610 black rather than 101 white and 628 black as defendants' proposed zone line would have done. In all other respects this court adopts the desegregation plan as proposed by the defendants dated March, 1971, and attached hereto and made a part hereof as "Exhibit G". As above indicated, there are no material

differences between the plan as proposed by the Office of Education and the plan as proposed by the defendants except as to zone 1. "Exhibit F" above referred to shows the estimated enrollment at each grammar school in the system under the plan hereby adopted except that there are approximately 193 students, 82 white, 111 black, living outside the city limits attending the Valdosta schools, and in accordance with said plan hereby adopted all students, regardless of color, who attend schools within the system but continue to live outside the system boundaries will be assigned to Sallas Mahone School in zone 2.

Accordingly, it is hereby ordered and adjudged that:

1. Defendants and each of them, their officers, agents, employees, successors and all persons in active concert or participation with them are hereby ordered not to discriminate on the basis of race against black students attending the public schools in this district.

2. The cross action filed by the defendant Board of Education is hereby dismissed.

3. The defendant Board of Education is hereby ordered to effectuate and put into operation for the 1971-72 school year the desegregation plan for the Valdosta City School District filed by the Valdosta City Board of Education as said plan is, by this decree, modified.

4. Defendants will implement along with said plan the provisions outlined in *Singleton v. Jackson Municipal Separate School Dist.*, 419 F.2d 1211 (5th Cir. 1969), in regard to desegregation of faculty and other staff, majority to minority transfer policy, transportation, should defendants acquire a transportation system, school construction and site selection, and attendance outside the system of residence.

5. On October 15, 1971 and March 15, 1972, and on each October 15 and March 15 annually thereafter until further order of this court defendants shall file with the Clerk of this court and serve copies upon the Department of Justice a report setting forth information described below:

(a) The number and race of students enrolled in each classroom in each school in the district;

(b) The number and race of the faculty assigned to each school in the district;

(c) The number and race of any elementary students who live outside of the city of Valdosta but who attend elementary schools in Valdosta and the school to which these students are assigned.

(d) The number and nature of the requests and the results which have accrued, by race, under the majority to the minority transfer provision.

(e) A statement as to whether all facilities such as gymnasiums, auditoriums, and cafeterias are being operated on a desegregated basis.

(f) Brief descriptions of any present or proposed construction or expansion of facilities.

(g) A statement as to whether the school board has:

1. sold or abandoned any school facility, equipment, or supplies having a total value of more than $500.00 since the date of this order;
2. sold, abandoned, or otherwise transferred any real property of this school district since the date of this order; and
3. closed or discontinued use of any school property, building, or facility since the date of this order.

6. Jurisdiction of this cause is retained by this Court.

SO ORDERED this 1st day of April, 1971.

/s/ W. P. BOOTLE
CHIEF JUDGE

This is to certify that I have this date mailed a copy of the within to Mr. Ross L. Connealy, Attorney, Education Section, Civil Rights Division, U.S. Dept. of Justice, Washington, D.C. 20530; and to Mr. Reuben H. Yancey, Walker and Yancey, P.O. Box 1507, 329 North Ashley Street, Valdosta, Georgia 31601.

This 1st day of April, 1971.

/s/ Dorothy F. Motes
Dorothy F. Motes
Deputy Clerk

IN THE
SUPREME COURT OF THE UNITED STATES
TERM, 1978

No.

THE BOARD OF EDUCATION FOR THE CITY OF VALDOSTA, GEORGIA,

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Respondent.

APPENDIX C

UNITED STATES DISTRICT COURT OPINION 1976

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION

UNITED STATES OF AMERICA,	)	CIVIL ACTION
	)	NO. 861
Plaintiff,	)	
	)	
v.	)	
	)	
THE BOARD OF EDUCATION	)	
OF VALDOSTA, GEORGIA,	)	
et al.,	)	
	)	
Defendants.	)	
	)	

MEMORANDUM AND ORDER WITH REGARD TO PLAINTIFF'S MOTION FOR SUPPLEMENTAL RELIEF

As a result of a school desegregation suit initiated by the Plaintiff some years ago this Court, on April 1, 1971, entered an order which established definite attendance zones for all of the elementary schools, junior high schools and high schools operated by the Defendant Board of Education, and directed that these zones be observed in the future. The Plaintiff has now filed a motion for supplemental relief contending that with the passage of time it develops that there

are now three elementary schools which have almost a total black enrollment and one elementary school which has an almost total white enrollment and the motion seeks an order of the Court which would require the pairing of certain schools or the busing of a number of students to "correct" this racial imbalance which has developed. No complaint is made with regard to the racial composition of the faculties at the schools.

The Plaintiff contends that *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, requires the Court to make the adjustments requested. On the other hand, the Defendant contends that a unitary school system has existed since the date of this Court's original order in 1971 and that such change as may have occurred in the racial composition of these schools referred to is the result of changing housing patterns and is not the result of any action on the part of the Board of Education and that this Court is not required to enter a further order simply for the purpose of establishing racial percentages in the schools.

An evidentiary hearing was held with regard to the Plaintiff's motion and as a result of this hearing the Court determines that the school system has been operated by the Defendants strictly within the guidelines set up by this Court in the Court's previous order. It further appears that no student in the elementary schools of the system is denied the privilege to transfer from a school in which his race is in the majority to a school in which his race is in the minority.

By oral argument counsel for the Plaintiff has suggested that the West Gordon Street Elementary School and the S. L. Mason Elementary School, each of which contains grades 1 through 6, should be paired or consolidated. However, the evidence presented clearly demonstrates that

the buildings and other facilities at each of these schools were constructed in such a manner that it would not be feasible to require their pairing or consolidation. The S. L. Mason School was constructed in a normal fashion by which is meant there are individual classrooms for the various grades within the school. On the other hand, the West Gordon Street School was constructed with an "open" concept without walls separating the facilities into individual classrooms, this structure being designed for team teaching, which teaching is done by 6 teams of teachers of 4 teachers each, each team working within 6 large multi-graded classrooms. For this reason if these schools were paired or consolidated it would cause a complete disruption in the type of training offered in the schools.

In recent years the Defendant Board has been able to provide some bus transportation for some students, but the transportation system is wholly inadequate for the mass busing contemplated by the Plaintiff's motion for further relief. The evidence shows that only a small percentage of elementary students are actually transported and none are transported who live within one and one-half miles of the schools which they attend. The Court determines that the busing envisioned by the Plaintiff would be impractical and unjustified in this case.

The Court has also taken into consideration the evidence with regard to the school system as a whole and observes that there is one high school which is attended by all high school students, black and white, and one junior high school which is attended by all junior high school students, black and white. It is also obvious that the faculties at the various schools are assigned on the basis of a ratio of black and

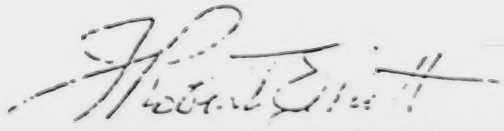
white which conforms to the total system ratio of black and white students, all of which conforms with the original order of this Court.

Stated otherwise, what the Court determines is that if any school is racially identifiable and if a racial "imbalance" exists, it is not because of any action or inaction on the part of the Defendant Board of Education, but is simply because of a change in housing patterns which has occurred since the date of the Court's original order and the obvious desire of the students to attend the schools which they are attending. There has been no denial of equal educational opportunity or equal protection of the laws within the system since the Court's original order.

In conclusion, the Court determines that the Defendant Board of Education has operated a unitary school system since the entry of this Court's order in 1971 and now operates a unitary school system, and there being no evidence of state imposed segregation within the system, the Plaintiff's motion for supplemental relief should be and the same is hereby denied.

When the affirmative duty of desegregation has been accomplished, as it has been in this case, the Court does not conceive it to be its duty to enter orders from year to year requiring the Defendant Board of Education to make adjustments within the system to conform with some arbitrary racial ratio.

This 9th day of June, 1976.



UNITED STATES DISTRICT JUDGE

Supreme Court, U. S.
FILED
SEP 27 1978
MICHAEL RODAK, JR., CLERK

No. 78-222

In the Supreme Court of the United States

OCTOBER TERM, 1978

THE BOARD OF EDUCATION FOR THE CITY OF VALDOSTA, GEORGIA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

WADE H. MCCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530

In the Supreme Court of the United States

OCTOBER TERM, 1978

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THE BOARD OF EDUCATION FOR THE CITY OF VALDOSTA, GEORGIA, PETITIONER

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MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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1. This litigation began in 1971, when the United States filed suit seeking to desegregate the school system of Valdosta, Georgia. As a result of that suit, steps were taken to dismantle the dual system that had previously been in existence in Valdosta. In 1976, the United States filed a motion for supplemental relief, seeking a further order directed to desegregating three elementary schools that still had an almost completely black enrollment and one elementary school that was still almost totally white (Pet. App. 2c-3c).

The district court denied the motion for supplemental relief (Pet. App. 1c-6c) on the ground that the school system had adhered strictly to the guidelines established

by the court's original 1971 desegregation order (Pet. App. 3c) and, therefore, that it had operated a unitary school system since 1971 (Pet. App. 5c). The court concluded that the school board's affirmative duty of desegregation had been satisfied and that any continuing racial "imbalance" in the school was not attributable to any action or inaction on the part of the school board, but to changing housing patterns and the desire of the students to continue attending the schools they were attending (Pet. App. 5c).

The court of appeals vacated the district court's order and remanded the case for further consideration (Pet. App. 1a-5a). The court noted that the continued presence of one-race schools in a system with a history of segregation is constitutionally suspect (Pet. App. 3a-4a). The presence of several such elementary schools in Valdosta, the court held, indicated that it had never achieved a unitary school system, even after the implementation of the 1971 desegregation order (Pet. App. 3a-5a). The court directed the parties and the district court on remand to develop a desegregation plan designed to alleviate the "high incidence" of racially identifiable elementary schools (Pet. App. 4a-5a).

2. The court of appeals did not finally dispose of the motion filed by the United States; it merely remanded the case for further consideration by the district court. In the absence of extraordinary circumstances, this Court has declined to review non-final orders issued by the courts of appeals. See, *e.g.*, *Brotherhood of Locomotive Firemen and Enginemen* v. *Bangor and Aroostook Railroad Co.*, 389 U.S. 327. There is no reason to depart from this practice here, particularly since the court of appeals did not order any specific form of relief or otherwise confine the district court's exercise of discretion, beyond stating

that the district court "should give further consideration to the steps necessary to create a unitary school system in Valdosta" (Pet. App. 5a).

3. In any event, the court of appeals' ruling is correct. Implementation of the 1971 desegregation plan did not establish a unitary system. As a result of that plan, as the court of appeals concluded, progress was made toward elimination of the vestiges of the dual school system, but not all the effects of state-imposed segregation were removed. These effects must be removed before any school system may be declared unitary. *Green* v. *County School Board*, 391 U.S. 430, 439.

This Court held in *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 26, that "in a system with a history of segregation the need for remedial criteria of sufficient specificity to assure a school authority's compliance with its constitutional duty warrants a presumption against schools that are substantially disproportionate in their racial composition." The continued existence of all-black or all-white schools previously so designated under a dual system requires close judicial scrutiny and places the burden on school board officials to establish that the racial composition of these schools is not a product of past or present discrimination by school authorities (*ibid.*). In this case, four of the system's six elementary schools that were racially identifiable in 1970 remained so in 1976 (Pet. App. 4a). From this six-year experience, it was evident that the previously acquired racial identity of those schools could not be overcome simply by following a policy of facially neutral school assignments. In this context, the court of appeals properly concluded that petitioner's facially neutral pupil assignment plan did not constitute "full performance of the school board's duty to eradicate the dual school system" (Pet. App. 5a).

The court of appeals' ruling is consistent with other post-*Swann* decisions in similar cases; this Court has repeatedly declined further review in these cases. See, *e.g.*, *Ellis* v. *Board of Public Instruction of Orange County, Florida*, 465 F. 2d 878 (C.A. 5), certiorari denied, 410 U.S. 966; *Hereford* v. *Huntsville Board of Education*, 504 F. 2d 857 (C.A. 5), certiorari denied *sub nom. Huntsville Board of Education* v. *United States*, 421 U.S. 913; *United States* v. *Texas Education Agency*, 512 F. 2d 896 (C.A. 5), certiorari denied *sub nom. Richardson Independent School District* v. *United States*, 423 U.S. 837; *United States* v. *Columbus Municipal Separate School District*, 558 F. 2d 228 (C.A. 5), certiorari denied, 434 U.S. 1013; *Lee* v. *Demopolis City School System*, 557 F. 2d 1053 (C.A. 5), certiorari denied, 434 U.S. 1014.[1]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

SEPTEMBER 1978

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[1]The decision in this case does not conflict, as petitioner claims (Pet. 4-5), with the decision of the Sixth Circuit in *Higgins* v. *Board of Education for the City of Grand Rapids*, 508 F. 2d 779. In *Higgins*, the court upheld the district court's finding that any segregation in the Grand Rapids school system was not the result of any intentional official action. The court distinguished cases in which desegregation had been officially required in the past, as in Valdosta. 508 F. 2d at 792. Since, as the court of appeals stated, "we cannot conclude that Valdosta has fully eliminated its dual school system" (Pet. App. 3a), further relief was properly required.

DOJ-1978-09